

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY LEE DEAN,

Defendant-Appellant.

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UNPUBLISHED

April 5, 2002

No. 237395

Eaton Circuit Court

LC No. 91-020461-FH

Before: K.F. Kelly, P.J. and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his sentence of seven to fifteen years in prison for probation violation following his plea-based convictions of two counts of manslaughter with a motor vehicle, MCL 750.321. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally convicted by a jury of two counts of manslaughter. In *People v Dean*, unpublished opinion per curiam of the Court of Appeals, issued February 27, 1996 (Docket No. 161221), another panel of this Court reversed defendant's convictions and remanded the case for a new trial. On remand, defendant pleaded nolo contendere to two counts of manslaughter with a motor vehicle. The trial court sentenced defendant to five years' probation, with the first year in the county jail. Defendant received credit for 1,162 days served. As a condition of his probation, defendant was prohibited from consuming alcoholic beverages.

Defendant was charged with and pleaded guilty to violating his probation by sustaining a conviction for operating a motor vehicle while impaired, consuming alcohol, and entering an establishment that serves alcohol as its primary business. The trial court sentenced defendant to seven to fifteen years in prison, with credit for 1,193 days. In imposing sentence, the trial court observed that it was lenient by originally granting probation and also noted that it warned defendant that he would face severe consequences if he violated his probation.

Defendant argues that his minimum term of seven years is disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentence. The judicial sentencing guidelines do not apply to probation violators and are not to be considered when fashioning a sentence for probation violation. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). Defendant's assertion that the statutory sentencing guidelines should be considered to determine

the proportionality of his sentence is without merit. The statutory sentencing guidelines apply only to offenses committed on or after January 1, 1999. MCL 769.34(1). The Legislature did not intend that the statutory guidelines be applied to offenses committed before January 1, 1999. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000).

The “key test”, relative to proportionality, is whether the sentence imposed reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). For an incident that resulted in the deaths of two persons, defendant received a lenient sentence of probation. At this time, the trial court put defendant on notice that it would consider a probation violation a very serious matter. Notwithstanding, defendant violated his probation by repeatedly consuming alcohol and by sustaining another driving conviction involving alcohol. Defendant’s behavior indicated an unwillingness to conform his actions to the requirements of the law. His minimum term of imprisonment does not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Martin M. Doctoroff  
/s/ Mark J. Cavanagh